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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-202325

DATE: August 10, 1981

MATTER OF: Sun Electric Corporation

DIGEST:

1. It is of no consequence when model offered in bid has not been produced in quantity required by IFB definitive responsibility requirement where model is part of series which has same function and performance requirements and which has been produced in required quantity.
2. Performance of predecessor firm may be considered in determining bidder's experience.
3. Where initial protest is made in expectation that agency might take action adverse to protester's interest, subsequent protest on new basis made within 10 working days after receipt of contracting agency's report is untimely, since protester waited until agency report was furnished to seek out information which was available months earlier.

Sun Electric Corporation (Sun) protests that an award of a contract for engine analyzers should not be made to Bear Automotive Service Equipment Company (Bear) under invitation for bids (IFB) No. DAAA09-80-B-5054 issued by the Army Armament Materiel Readiness Command, Rock Island, Illinois.

Essentially, Sun contends that Bear has not complied with the definitive responsibility requirement in the IFB that the bidder have manufactured 1,000 engine analyzers per year from January 1978, since Bear was established in December 1980, and that, in any event, the engine analyzers that were manufactured were not the specific model 40-600 engine analyzer

[Protest Alleging Non-Compliance with
Definitive Responsibility in the IFB]

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offered in the bid. Sun also protests after the receipt of the contracting agency report on the protest that the engine analyzer offered by Bear in its bid is nonresponsive to the IFB specifications in several respects.

We consider that the protest is without merit in part and untimely in part.

Although Bear was not established until 1980, the record indicates that it is the successor in interest to a prior corporation that was manufacturing the series 40 engine analyzer. Further, the record indicates that Bear and the predecessor company have been producing more than 1,000 series 40 engine analyzers each year since 1978, although the number of model 40-600 engine analyzers has not reached that amount during the specified period. The Army states that the engine analyzers of the model 40 series all perform the same functions and meet the same performance requirements. Therefore, the Army considers that the manufacture of the series 40 engine analyzer satisfies the experience requirement.

We have held that compliance with definitive responsibility criteria does not mean literal compliance and that a bidder may demonstrate a level of achievement equivalent to that specified in the IFB. Pikes Peak Community College, B-199102, October 17, 1980, 80-2 CPD 293. Further, we have stated that the performance of a predecessor firm may be considered in determining the bidder's experience. 36 Comp. Gen. 673 (1957). Thus, the fact that Bear was not in existence before 1980 and that neither it nor its predecessor has manufactured 1,000 model 40-600 engine analyzers is of no consequence.

Moreover, we do not consider the protest made by Sun after receipt of the Army report to be timely. Our Bid Protest Procedures emphasize the expeditious pursuit of protests. We believe that, in general, a protester which is challenging an award or proposed award on one ground should diligently pursue information which may reveal additional grounds of protest regarding a competitor's offer. See Policy Research

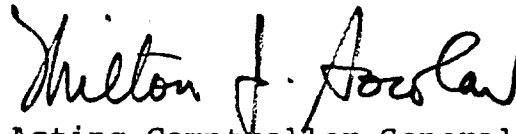
Incorporated, B-200386, March 5, 1981, 81-1 CPD 172; Tymshare, Inc., B-193703, September 4, 1979, 79-2 CPD 172. Also, we have held that separate grounds of protest asserted after a protest has been filed must independently satisfy the timeliness requirements of our Bid Protest Procedures. Our Procedures require a protest of this type to be filed "not later than 10 days after the basis for the protest is known or should have been known, whichever is earlier." See 4 C.F.R. § 21.2(b)(2) (1981). Annapolis Tennis Limited Partnership, B-189571, June 5, 1978, 78-1 CPD 412.

Ordinarily, the protester is not charged with knowledge of a basis for protest until the contracting agency conveys to the protester a position adverse to the protester's interest. Brandon Applied Systems, Inc., 57 Comp. Gen. 140 (1977), 77-2 CPD 486. On that basis, Sun's protest made within 10 working days after the receipt of the Army's report indicating for the first time that the Army intended to make an award to Bear would ordinarily be timely. Werner-Herbison-Padgett, B-195956, January 23, 1980, 80-1 CPD 66; Action Manufacturing Company-Reconsideration MBAssociates, B-186195, November 17, 1976, 76-2 CPD 424. However, Sun's protest to which the Army's report responded apparently was made with the expectation that the Army might take an action adverse to Sun's interest. Yet Sun took no action at the time of the protest to investigate whether the model 40-600 Bear was offering was responsive to the IFB specifications.

It seems clear that Sun simply waited several months until the agency report of June 12, 1981, was furnished to seek out the information which would have revealed the additional separate basis for protest. The furnishing of the report then became the occasion for Sun to go back and review information about Bear's bid which could have been ascertained months earlier before the original protest of March 3, 1981. Sun's piecemeal protest only serves to delay the procurement process and runs counter to the theme of our Bid Protest Procedures which emphasizes the expeditious pursuit of protests.

In our view, Sun failed to diligently pursue the matter and the additional grounds of protest were not filed within 10 working days after the bases for protest should have been known. Accordingly, the arguments raised by Sun in its June 19, 1981, letter are not timely and, therefore, not for our consideration.

The protest is denied in part and dismissed in part.

A handwritten signature in dark ink, appearing to read "Milton J. Arosen". The signature is fluid and cursive, with the first name "Milton" being the most prominent.

Acting Comptroller General
of the United States